

COMMONWEALTH OF PUERTO RICO  
COURT OF FIRST INSTANCE  
SAN JUAN JUDICIAL CENTER  
SUPERIOR COURTROOM

W HOLDING COMPANY, INC.,  
FRANK STIPES GARCIA, JUAN C.  
FRONTERA GARCIA, HÉCTOR DEL  
RÍO TORRES, WILLIAM VIDAL  
CARVAJAL, CESAR RUIZ, AND  
PEDRO R. DOMINGUEZ ZAYAS

Plaintiffs

v.

CHARTIS INSURANCE COMPANY OF  
PUERTO RICO

Defendant

CIVIL NUM. AC 2011-1370 (902)

REGARDING:

DECLARATORY JUDGMENT

2011 DEC 30 PM 1:09

RECORDED  
DIV. PRESENTACIONES  
CENTRO JUDICIAL SJ

COMPLAINT IN INTERVENTION

The Complaint in Intervention of the Federal Deposit Insurance Corporation (“FDIC” or “Receiver”), as Receiver of Westernbank Puerto Rico (“Westernbank” or the “Bank”), respectfully represents that:

1.

Pursuant to Rule 21.1 of the Puerto Rico Rules of Civil Procedure, a third person having an interest in a pending action may intervene as a matter of right whenever the law confers an unconditional right to intervene or when a person claims a right or interest relating to the property or transaction that is the subject of the action that may as a practical matter be affected by the final disposition of the action. The Puerto Rico Direct Action Statute, P.R. Laws Ann. Tit. 26, §§ 2001, 2003, grants the Receiver a direct interest in and right to the proceeds of the insurance policies that are the subject of this action, and a substantive cause and right of direct action under the policies against the issuer thereof - the Defendant, Chartis Insurance Company of Puerto Rico (“Chartis”). The final disposition of this action may as a practical matter affect and impair the Receiver’s rights and interests in and to the policies and its rights and claims against Chartis. Thus, the law grants the Receiver the unconditional right to intervene in this action.

2.

Defendant Chartis, f/k/a American International Insurance Company of Puerto Rico, issued policies of director and officer liability insurance (the “policies”) covering Westernbank’s

former officers and directors, including the individual Plaintiffs in this action, for their liabilities to Westernbank and its Receiver. The individual Plaintiffs, and other former officers and directors of the Bank, were grossly negligent in the discharge of their duties, amounting to reckless indifference to or deliberate disregard of the welfare of the Bank and its depositors, or actions which were without the bounds of reason. These acts of gross negligence included:

- A. grossly negligent approval of commercial real estate, construction and asset based loans in violation of the Bank's lending policies and procedures, federal safety and soundness regulations, and prudent lending standards;
- B. grossly negligent funding and administration of loans in violation of the Bank's loan approval terms, lending policies and procedures, federal safety and soundness regulations, and prudent lending and administration standards;
- C. grossly negligent failure to heed and act upon examiner and auditor warnings of deficiencies in lending and loan administration functions, and continued funding of loans in the face of those deficiencies and warnings.

These acts of gross negligence proximately caused over \$176 million in damages to Westernbank. Under the Puerto Rico Direct Action Statute, Westernbank and its Receiver have a substantive right and cause of action against Chartis for recovery of those damages from the proceeds of the policies. In the direct action, all issues of liability and insurance coverage are decided in a single action.

### 3.

On April 30, 2010, the Office of the Commissioner of Financial Institutions of the Commonwealth of Puerto Rico closed Westernbank and appointed the FDIC as its Receiver. See **Exhibit 1**. On that date, as a matter of federal law, the Receiver succeeded to all of the rights and assets of Westernbank, including its rights and claims against its former officers and directors, and its rights, interests and claims in and to the policies and against Chartis under the Puerto Rico Direct Action Statute.

### 4.

Plaintiffs, W Holding, Frank Stipes Garcia, Juan C. Frontera Garcia, Héctor Del Río Torres, William Vidal Carvajal, Cesar Ruiz, and Pedro R. Dominguez Zayas, filed this declaratory judgment action on October 6, 2011, asserting that the policies cover their liability to the Receiver for their actions as former officers and directors of Westernbank. Because the instant action seeks a declaration of Chartis' contractual obligations under the policies, including its obligations to cover and pay the Receiver's claims under the policies, the outcome of the action may, as a practical matter, affect and impair the Receiver's rights and

interests in and to the policies and its rights and claims against Chartis. Further, the exclusion of the Receiver from this action would lead to duplicative litigation and potentially inconsistent and conflicting adjudications of the same factual and legal issues in different courts.

5.

FDIC, as Receiver of Westernbank, therefore is entitled to intervene in this case as a matter of law and right, and does so through the instant Complaint in Intervention.

**WHEREFORE**, FDIC, as Receiver of Westernbank Puerto Rico, prays for all legal, equitable, and other relief to which it may be entitled as Intervenor.

**I HEREBY CERTIFY:** that on this same date a true and certified copy of the foregoing was sent by regular mail to Harry N. Padilla Martinez, Apartado 2131, Mayaguez, Puerto Rico 00681, Jose M. Toro Iturrino, 20 Calle Dr. Feliz Tio, Suite 5, Sabana Grande, Puerto Rico 00637-1833, and Héctor Saldaña Egozcue, Saldaña & Saldaña Egozcue, 208 Ponce de León Ave., Suite 1420, San Juan, Puerto Rico 00918-1015.

In San Juan, Puerto Rico, this 30 day of December 2011.

RESPECTFULLY SUBMITTED.

**TORO, COLON, MULLET, RIVERA  
& SIFRE, PSC**

**Attorneys for the Federal Deposit**

**Insurance Corporation**

Post Office Box 195383

San Juan, Puerto Rico 00919-5383

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**MANUELA FERNANDEZ-BARED**

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THIS EDGE IN FIRST



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MFB/FDIC D&O  
Complaint in Intervention  
00196122  
Sello Rentas Internas  
50106-2011-1230-59062690

▲ PEEL & REMOVE STAMP  
AFTER PRINTING

**EXHIBIT 1**



COMMONWEALTH OF PUERTO RICO  
COMMISSIONER OF FINANCIAL INSTITUTIONS

ALFREDO PADILLA  
Commissioner

April 30, 2010

BY PERSONAL DELIVERY

Federal Deposit Insurance Corporation  
550 Seventeenth Street, N.W.  
Washington, D.C. 20429

RE: WESTERNBANK PUERTO RICO

Gentlemen:

Pursuant to Section 30 of the Banking Law of Puerto Rico (7 U.P.R.A. Sec. 201), I am writing with respect to the "Notification of Formal Enforcement Action" (the "Notification") issued by the Federal Deposit Insurance Corporation ("FDIC") in its capacity as a federal bank supervisory agency, dated April 27, 2010 and addressed to Westernbank Puerto Rico (the "Bank").

In the Notification the FDIC gives formal notice to the Bank of the findings of a joint special examination performed by the FDIC and the Office of the Commissioner of Financial Institutions (the "Office"). The Notification formally advises the Bank that it has been found to be in a financially critically deficient situation. As a result of this finding, the bank has been issued a Prompt Correction Action ("PCA") directive which, among other things, bars the Bank from accepting, renewing or rolling over any brokered deposits.

As a result of all of the above, I have determined that the Bank is not in a sound financial condition to continue its operations. As a result, it is necessary for me to assume control of the Bank for the purpose of its total liquidation.

Pursuant to Section 30 mentioned above, I hereby tender receivership of the Bank and appoint you as its Receiver. It is requested that as Receiver you proceed with the total liquidation of the Bank in such manner as your deem appropriate in your discretion pursuant to the provisions of the Federal Deposit Insurance Act, without further supervision by this Office.

PO BOX 11855 SAN JUAN PUERTO RICO 00910-3855 | Phone: 787 723-3131 | Fax: 787 723-4042 | e-mail: apadilla@cif.gov.pr | www.cif.gov.pr

Appointment of Receiver  
April 30, 2010  
Eurobank Puerto Rico  
Page 2 of 2



If this tender is accepted by you, you are requested to advise us by signing below and returning to us the enclosed copy of this letter.

On this date I have fully informed the Governor of the Commonwealth of Puerto Rico in writing of the details and basis for my actions with respect to and of our intention of tendering to you the receivership of the Bank, as per the attached copy of the letter to the Governor.

Cordially,

A handwritten signature in cursive script, appearing to read "Victor M. Robert".

ACCEPTANCE OF DESIGNATION AS RECEIVER

The appointment as Receiver of the Bank is hereby accepted.

By: \_\_\_\_\_

Name: VICTOR M. ROBERT

Title: ATTORNEY-IN-FACT

Date: 30 April 2010